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Attorneys for Plaintiff Miller

Judge Anna J. Brown

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

JULIE MILLER,

Case No. 3:11-cv-01231-BR

Plaintiff,

v.

**EQUIFAX INFORMATION SERVICES
LLC**, a foreign limited liability company,

**DECLARATION OF JUSTIN M.
BAXTER FILED IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEY FEES**

Defendant.

I, Justin M. Baxter, make this declaration subject to penalty of perjury.

1. Attached hereto as Ex. 1 is a true copy of the 2012 Oregon State Bar Economic Survey.
2. Attached hereto as Ex. 2 is a true copy of the Morones Survey of Commercial Litigation Rates (2012 Update).

3. Attached hereto as Ex. 3 is a true copy of defendant's responses to plaintiff's requests for admissions in this case.

4. Attached hereto as Ex. 4 is a statement of plaintiff's attorneys' time records for this case.

5. Attached hereto as Ex. 5 are excerpts from the trial transcript referred to in the memorandum in support of the motion.

6. Attached hereto as Ex. 6 is a true copy of the Court's order on attorney fees in *Valentine v. Equifax*, U.S. District Court (Or.) Case No. 05-CV-0801-JO.

7. Attached hereto as Ex. 7 is a true copy of the Court's order on attorney fees in *Kirkpatrick v. Equifax Information Services LLC*, U.S.D.C. (Oregon) Case No. CV-02-1197-MO Lead.

8. Attached hereto as Ex. 8 is a true copy of the Court's order on attorney fees in *Jansen v. Experian Information Solutions, Inc.*, U.S. Dist. Ct. (Or.) CV-05-00385-BR

9. Michael Baxter's hourly rate is \$425. In 2007, Judge Jones of this Court found that Mr. Baxter's hourly rate of \$325 was reasonable. *Valentine v. Equifax*, U.S. District Court (Or.) Case No. 05-CV-0801-JO. Michael Baxter has been in private practice since 1991. He is recognized nationally in the top tier of consumer litigators and particularly in FCRA litigation. He has a long track record of exceptional jury verdicts in consumer cases:

- In 1995, he obtained a \$1 million punitive damages verdict under Oregon Unlawful Trade Practices Act, upheld on appeal, *Parrott v. Carr Chevrolet*. 17 P.3d 473 (Ore. 2001).
- In 1997, he obtained a \$100,000 verdict under the Fair Debt Collection Practices Act (FDCPA), *Pope v. Man-Data Inc.*, U.S. Dist. Ct. (Or.) Case No. 95-1299 JE.
- In 1998, he obtained a \$600,000 verdict against TRW under the FCRA, *Jorgensen v. TRW*, U.S. Dist. Ct. (Or.) Case No. CV 96-286-JE.

- In 2002, he obtained a \$5.3 million verdict against Trans Union under the FCRA, *Thomas v. Trans Union*, U.S. Dist. Ct. (Or.) Case No. CV 96-286-JE.
- In 2005, he obtained a \$210,000 verdict against Equifax under the FCRA, *Kirkpatrick v. Equifax*, U.S. Dist. Ct. (Or.) Case No. CV 02-1197-MO.
- In 2007, he obtained a \$200,000 verdict against Equifax under the FCRA, *Valentine v. Equifax*, U.S. Dist. Court (Or.) Case No. 05-CV-0801-JO.
- In 2008, he obtained a \$108,000 verdict in an injury case, *Hunter v. Boysen*, Mult. Co. Cir. Ct. Case No. 0703-03346.
- In 2010, he obtained a \$100,000 verdict under the FDCPA, *West v. Dodeka*, Mult. Co. Cir. Ct. Case No. 0911-16288.

10. My hourly rate is \$375. In 2010, this Court found that my hourly rate of \$295 was reasonable. *Jansen, supra*. I have been in private practice since 1999. I was co-counsel in *Kirkpatrick, supra*, as well as trial counsel in *Valentine* and *West, supra*. In 2010, I obtained a \$95,000 verdict against TRS Home Furnishings under the Oregon Unlawful Debt Collection Practices Act, *Edwards v. The Rental Store*, Mult. Co. Cir. Ct. Case No. 0906-08151.

11. I am a former chair of the OSB Consumer Law Section and the current co-chair of the Oregon Trial Lawyers Association Consumer Protection Section. I am the author of the chapters on the FCRA in the 2013 and 2005 editions of Consumer Law in Oregon (OSB Cont. Ed.). I have been invited to lecture on the FCRA around the country and I have been retained as co-counsel in FCRA litigation in 17 different states.

12. Kachelle Baxter's hourly rate is \$225. Ms. Baxter has been in private practice since 2012. The OSB economic survey indicates that hourly rates for Portland attorneys in practice 0-3 years range from a median of \$175 to a 95th percentile of \$198. Ex. 1 at 30. The Morones Survey indicates that the average hourly rate for attorneys in practice 0-9 years is \$289 and the median is \$250. Ex. 2 at 2. A 3.8 percent annual increase of those rates for inflation reflects an average of \$285 and a median of \$269.

13. Prior to beginning her private practice, Ms. Baxter worked as litigation support in FCRA cases since 2002, including on *Thomas, Kirkpatrick and Valentine, supra*. She was also the senior litigation support in *Williams v. Equifax*, Orange Co. Cir. Ct. (Fla.) Case No. 48-2003-CA-9035-0, which involved extremely similar issues as this case.

14. Ms. Leonard's hourly rate is \$425. Her rate is consistent with those of attorneys in Portland for a comparable period in the practice. The OSB economic survey indicates that hourly rates for Portland attorneys in practice over 30 years range from a median of \$350 to a 95th percentile of \$500. Ex. 1 at p. 30. The Morones survey indicates that the average hourly rate for Portland attorneys in practice over 30 years is \$448 and the median is \$450. Ex. 2 at p. 2.

15. Ms. Leonard has been a member of the Oregon State Bar since 1982 and in private practice since 1993 specializing in appellate litigation. Ms. Leonard clerked for Justice Betty Roberts at the Oregon Supreme Court, and was the staff attorney for the Oregon Supreme Court. Ms. Leonard has represented plaintiffs in numerous cases involving significant punitive damage awards, including *Bocci v. Key Pharmaceuticals, Inc.*, 974 P.2d 758 (Ct. App. Ore. 1999), *Lakin v. Senco Products, Inc.*, 987 P.2d 463 (Ore. 1999), *Parrott v. Carr Chevrolet*, 17 P.3d 473 (Ore. 2001), *Groth v. Hyundai*, 149 P.3d 333 (Ct. App. Ore. 2006), *Williams v. Philip Morris*, 176 P.3d 1255 (Ore. 2008), *Schwarz v. Philip Morris*, 235 P.3d 688 (Ore. 2010). Ms. Leonard was also involved as an Oregon Trial Lawyer Association (OTLA) amicus brief writer in the Oregon and U.S. Supreme Courts in *Oberg v. Honda Motor Co.*, 888 P.2d 8 (Ore. 1995) where Ms. Leonard, with others, assisted Professor Lawrence Tribe, who argued that case for the plaintiffs before the U.S. Supreme Court. Members of the plaintiff's and consumer litigation bar in Oregon often consult Ms. Leonard about the developing law regarding punitive damages. Ms. Leonard is a member and past chair of the OTLA Amicus Committee, and a member and past board

member of the OSB appellate practice and constitutional law sections.

16. Plaintiff has incurred the following costs in this case, records of which are maintained by my law firm:

Filing Fee	...	350
Process Server - Ace Messenger	...	30
Court Reporter – D’Amico Gershwin	...	1,407.37
Court Reporter – TSG Reporting	...	324.20
Court Reporter – TSG Reporting	...	366.75
Court Reporter – Amanda LeGore	...	624.40
Expert Witness – Evan Hendricks	...	36,615
Total	...	39,717.72

DATED this 28th day of February, 2014.

Respectfully submitted,

/s/ Justin M. Baxter

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 (503) 291-9172 (Facsimile)
 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF JUSTIN M. BAXTER on the following persons:

Jeffrey M. Edelson
Markowitz Herbold Glade & Mehlhaf, PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204

Phyllis Sumner
Lewis Perling
King & Spalding LLP
1180 Peachtree Street
Atlanta, GA 30309-3521
Attorneys for Equifax Information Services

by the following indicated method:

- by **mailing** full, true and correct copies thereof in sealed, first-class postage prepaid envelopes, addressed to them at the address set forth above and deposited with the United States Postal Service on the date set forth below.
- by **electronically mailing** full, true and correct copies to the attorney(s) set forth above on the date set forth below.
- by electronic delivery of full, true and correct copies through the court's **CM/ECF** system to the attorney(s) set forth above on the date set forth below.
- by causing full, true and correct copies thereof to be **hand-delivered** to them at the address set forth above on the date set forth below.
- by **facsimile** transmission of full, true and correct copies on the date set forth below.

DATED this 28th day of February, 2014.

Respectfully submitted,

/s/ Justin M. Baxter

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